Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-1259

LESLIE B. PONDER, JR.,
Appellant

versus

LOUISIANA STATE BAR ASSOCIATION,
Appellee

ON APPEAL FROM THE SUPREME
COURT OF LOUISIANA

JURISDICTIONAL STATEMENT

MILTON P. MASINTER
550 South Broad Street
New Orleans, Louisiana

Attorney for
LESLIE B. PONDER, JR.

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

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JURISDICTIONAL STATEMENT

Appellant, Leslie B. Ponder, Jr., an attorney at law, a member of the bar of Louisiana for 46 years and admitted to the bar of this Honorable Court appeals from the final judgment, the final judgment of the Supreme Court of Louisiana suspending him from practicing law in the state of Louisiana, entered on May 17, 1976 after the denial of a timely petition for rehearing of the decree on rehearing rendered on November 8, 1976 with denial of rehearing on December 10, 1976.

An application for a stay of mandate was granted by the Supreme Court of Louisiana until February 1, 1976 which stay of mandate was extended unto March 10, 1977. (Appendix A.).

OPINION BELOW

The original opinion of the Supreme Court of Louisiana dismissing this action with opinion on rehearing ordering suspension is reported in 340 So. 2d 134, a copy of which with dissent of Justice Summers thereto as exhibit B.

JURISDICTION

This is an action for the disbarment of the Appellant, Leslie Barbee Ponder, Jr., following his conviction in the United States District Court for the Eastern District of Louisiana for violation of Int. Rev. Code section 7206 (1) relative to filing false income tax returns which is not a crime under the statutes of Louisiana.

The Louisiana State Bar Association petitioned the Supreme Court of Louisiana for the disbarment of appellant and the cancellation of his license to practice in the State of Louisiana pursuant to the provisions of Article 15, Section 8 paragraph 7 (b), articles of incorporation of the Louisiana State Bar Association, title 37, La. Rev. Statutes of 1950, as amended.

The judgment sought to be reviewed was rendered on November 8, 1976. A timely petition for rehearing was denied and the judgment of the Supreme Court of Louisiana was entered on December 10, 1976. (Appendix C). Notice of appeal was filed in the Supreme Court of Louisiana on December 16, 1976. (Appendix A).

The Statutes believed to confer jurisdiction on this Honorable Court to review his case on appeal is 28 U.S.C.

section 1257 (2).

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Cases in support of the appellate jurisdiction of this Court are *Dahnke-Walker Co. v. Bondurant,* 257 U.S. 282 (1921), and *Hanson v. Denckla,* 357 U.S. 235, 244 (1958). In the Dahnke-Walker case, this court held that a proper construction of 28 U.S.C. section 1257 (2) would encompass a situation where a State Court decision determines the validity of a state statute as applied in that case. In the Hanson case, this court distinguished between situations in which the contention of Federal Supreme Court appellant jurisdiction was properly framed for the first time in this court and those situations where the case had been presented throughout in a manner which comported with the applicable provisions of 28 U.S.C. section 1257 (2). In this case, Appellant has contended throughout that the statute, as applied to him for conduct occurring before the statute was enacted, violated the Ex post facto Clause of the United States Constitution, Article 1, Section 10, clause one. This case is therefore one which comes within the appellate jurisdiction of this Court to prevent denial of Con-

stitutional rights and privileges guaranteed by Article 1, Section 10 and Amendments 4, 5, 6, and 14 of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This appeal involves Article 1, Section 10 clause 1 of the United States Constitution and Article 15, Section 8, Articles of Incorporation of the Louisiana State Bar Association, as amended, and former Article 13, Sec. 12, Arts. of Inc. LSBA (March 15, 1964), copies of which are appended hereto as Appendix F. La. R.S. 37:211 provides that the Louisiana State Bar Association is created and regulated under the rule-making power of the Supreme Court of Louisiana, pursuant to a memorial addressed to the court by the legislature in Act. 54 of 1940., Section 3 of Act 54 of 1940 provides that Supreme Court is hereby memorialized to exercise its inherent powers by providing for the organization and regulation of the Louisiana State Bar Association; by providing rules and regulations concerning admissions to the Bar, the conduct and activities of the Association and its members;and by providing a schedule of membership dues, the non-payment of which shall be ground for suspension; and by providing for the discipline, suspension or disbarment of its members.

The constitutional provisions involved article 1, section 10 of U.S. Constitution.

"No State shall – pass any – ex post facto law."

B. Amendment IV to U.S. Constitution provides:

"The right of the people to be secure in their persons – against unreasonable seizures."

C. Amendment V to the U.S. Constitution provides:

"No person shall be held -- nor be deprived of life, liberty or property without due process of law. ----."

D. Amendment VI to constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right -- to be confronted with the witnesses against him; ---"

E. Amendment 14 to U.S. Constitution Section 1, provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process within its jurisdiction the equal protection of the laws."

THE QUESTIONS PRESENTED

1. Whether Article XV, Section 8(7), Articles of Incorporation of the Louisiana State Bar Association, adopted September 1, 1971 as applied to a conviction arising out of conduct which occurred in 1960 and 1961 or 10 years prior to its adoption by the Supreme Court of Louisiana as

a rule of that Court, constitutes an ex post facto law when the effect of that law is to disbar the appellant upon a conviction only.

2. Finding that the offense of which he is convicted is a "serious crime" and to deny him the opportunity to present any evidence in rebuttal of the prima facie case established by the conviction when such rebuttal was permitted under former Article 13, Sec. 12, Arts of Inc. LSBA which was in effect at the time of the act made the subject of the petition for disbarment.

3. Can appellant be deprived of his right to practice law in the State of Louisiana without being afforded the opportunity to contest the recommendations against him in a full and fair hearing, on the basis of a statute which provides that the conviction is final, unrebuttable, and unassailable proof of misconduct, allowing the respondent attorney the opportunity to offer evidence in mitigation only, and then merely evidence "not" inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime, thereby denying him the due processes of the law as provided heretofore.

STATEMENT OF THE CASE

A concise statement of the case presenting the constitutional questions on formation are: Louisiana Bar Association was formed in 1941 by a Charter by the Supreme Court of Louisiana which was a legislative function in violation of the separation of powers in the Louisiana Constitution, specifically in violation of Louisiana Constitution 1921, article 2, Section 1 which provides:

> "The powers of the government of the State of Louisiana shall be divided into three distinct departments - legislative, executive and judicial."

And in violation of Section 2 thereof providing:

> "No one of these departments nor any persons or collection of persons holding office in one of them shall exercise power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

Appellant was convicted in the United States District Court for the Eastern District of Louisiana for filing false income tax returns for the years 1960 and 1961. The United States Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court and this court denied appellant's application for a writ of certiorari.

Following the denial of the petition for a writ of certiorari, the Louisiana State Bar Association, through its Committee on Professional Responsibility, filed a petition for disciplinary action during appellant's federal conviction only as grounds for disbarment. The Supreme Court of Louisiana, pursuant to Article 15, Sec 8(7), (b) Arts. of Inc. LSBA, appointed a Commissioner to conduct a hearing on the Bar Association's petition. The Association proceeded under a regulation of the Supreme Court adopted in 1971 or more than 10 years after the alleged offense. A hearing was had before the Commissioner.

Petitioner was not afforded nor accorded this hearing and therefore been denied the right of hearing and the due pro-

cess of law. In this connection petitioner shows that he is being prosecuted for disbarment which is a quasi criminal proceeding whereas others convicted or pleading to similar offenses and with particularity, U.S. vs. Cashio and U.S. vs. Lehman, were not proceeded against, hence petitioner is being denied the equal protection of the law and that the law is being administered with partiality and favortism in such a manner as to deny him the equal protection and the due processes of law as guaranteed by the United States Constitution and its amendments.

Petitioner further shows that he raised in Articles 5, 6 and 7 of original exceptions and pleas annexed that he obtained a pardon from the Governor of the State of Louisiana after proceeding before the Board of Pardons and that this is a bar to disbarment proceeding as specifically provided for in the article of incorporation of the Louisiana Bar Association. This constitutional question was raised and is provided in Article 13, Section 12 quoted in article 4 of original exceptions.

At that time appellant attempted to introduce evidence which would mitigate the severity of the crime, however such evidence was held to be irrelevant to the issues. Appellant filed exceptions before the Commissioner and in the Louisiana Supreme Court urging that the proceedings here were brought under the provisions of the current article 15, Section 8, articles of incorporation of the LSBA whereas the conduct made the subject of the petition for disbarment occurred 10 years prior thereto hence a violation of his Constitutional immunities and privileges Article 1, Sec. 10 (1).

The Supreme Court of Louisiana for purposes of Article 15, Section 8, articles of incorporation of LSBA, determined that the conviction did not become final until this court denied appellant's petition for writ of certiorari. The Court quoted from the previous opinion in *LSBA* **vs.** ***Edwards*** 322 So. 2d 123 (La. 1975).

The Court applied the rule, which became effective after the date of the appellant's alleged conduct and federal conviction on the theory that "conviction", rather than the alleged criminal conduct, was the basis for the disbarment. This ruling of the court effectively disposed of appellant's claim that the application to him of the new disbarment-for-conviction rule violated the ex post facto clause of the United States Constitution which the Supreme Court of Louisiana acknowledged in its original opinion, but they granted a rehearing and then a turn-about decision.

The issues herein presented were squarely presented to and decided upon by the Supreme Court of Louisiana.

In Respondent's Original Brief, filed in the Supreme Court of Louisiana on behalf of Appellant herein, the Appellant urged that the application of Article 15, Section 8 (7) (d). Arts. of Inc. LSBA, to preclude him from adducing evidence inconsistent with the essential element of criminal intent, which was authorized under the jurisprudence construing the equivalent provisions of Article 13, Sec. 12 of the former Articles of Incorporation of the Louisiana State Bar Association, *Louisiana State Bar Association vs. Cawthorn*, 223 La. 884, 67 So. 2d 165, 168 (1953), altered his position to his disadvantage, making this a violation of his substantive rights under the Ex Post Facto Clause of the

Constitution under *Kring vs. Missouri*, 107 U.S. 221 (1882), as well as deprived him of his right to a full and fair hearing before the Commissioner and the Supreme Court of Louisiana, on the issues of the disbarment action, in violation of his right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution. The Court, while not specifically addressing itself to this issue, held (340 So. 2d at 269):

> * * *Some of the evidence offered at the Commissioner's hearing was inconsistent with respondent's guilt. The Commissioner properly rejected this evidence.* * *

[Should this Court consider this issue to be one properly raised by petition for a writ of certiorari, rather than appeal. Appellant respectfully submits it is proper to include in this Jurisdictional Statement "any other denial of federal right whether or not capable in itself of being brought here by appeal" Prudential Ins. Co. v. Cheek, 259 U.S. 530, 547 (1922). The opinion of the Court below necessarily rejected Appellant's argument that the statutory procedure violated due process, whether or not it can be conclusively said that the constitutionality of the application of Art. 15, Sec. 8(d)(7), as applied, was directly challenged. Accord, Hanson v. Denckla, 357 U.S. 235, 244 (1958).)]

THE QUESTIONS ARE SUBSTANTIAL

1. The Ex Post facto Issue

Article 1, Sec. 10, clause i of the United States Constitution provides that "No State Shall * * * pass any * * * ex post facto Law."

Generally speaking, a law is ex post facto which, in relation to an offense committed before its passage, alters the situation of a party to his disadvantage. *Kring v. Missouri*, 107 U.S. 221 (1882); *In re. Medley*, 134 U.S. 160 (1890); *Lindsey v. Washington*, 301 U.S. 397 (1937).

For the question of ex post facto to arise, it must first be determined that the crime in question was committed before the change in law concerning that crime became effective. Courts have shown a difference of opinion concerning the problem of when a crime is committed. Some Courts have said that the act constitutes a crime and that the consequences merely relate back and characterize the act. See *Stout v. State*, 76 Md. 317, 25 At. 299, 301 (1892); *Moran v. Territory*, 14 Okl., 544, 78 Pac. 11, 113 (1904), *State v. McCoomer*, 79 S.C. 63, 60 S.E. 237, 238 (1908); *State v. Marino*, 43 So. 2d 685 (1949). Other courts have said that it is neither the act nor the consequence alone that constitutes the crime, but the combination of the two. See *Brockway v. State*, 192 Ind. 656, 138 N.E. 88 (1923); *Alderson v. State*, 196 Ind. 22, 145 N.E. 572, 573 (1924). If a crime is defined as an act irrespective of the consequences, the crime is the act; but if a crime is defined to include some consequence of the act, the crime is the consequence when produced by human agency. See *Daeche v. U.S.*, 250 Fed. 566, 570 (C.C.A. 2d 1918).

The situation of respondent has been altered to his disadvantage. Under the laws governing disciplinary proceedings prior to the effective date of the New Article 15, (1) there was no mandatory minimum of five years required

before application for reinstatement (Art. 13 Sec. 12); (2) upon the person convicted being pardoned by the President or Governor, the court upon application could vacate or modify such order of disbarment (former Art. 13 Sec. 12); (3) conviction in a state or federal court merely set out a prima facie case of misconduct, which respondent may refute, whereas the new rules accept the conviction as final and unassailable [compare Art. 15 Sec. 8(7) (d) with former Article 13, Sec. 12 and ***Louisiana State Bar Association vs. Cawthorn***, 223 La. 884 67 So. 2d 165, 168 (1953).]

Further, it must be noted that under the provisions in effect prior to September, 1971, disciplinary action could have been instituted by the bar association any time subsequent to April, 1961. The choice lay with the Bar Association, not respondent, and he should not be penalized by the election made by the Bar Association to take no action until subsequent to the adoption of the present Articles of Incorporation in 1971.

Obviously substantially different issues of procedure and substance are presented to the Court if this matter is considered under the rules in force prior to October, 1971; the issue under those rules will be whether or not the respondent can refute the presumption of misconduct created by the judgment of conviction as set out in the allegations of the petition for disciplinary action. The position of the Bar Association, adopted by the Commissioner and this Court, is that the certificate of conviction is conclusive of the fact of respondent's guilt, as provided by the current LSBA Article 15. It necessarily follows that these entire proceedings are tainted by the fact that they are brought

under the wrong statute, and should be dismissed, because respondent is entitled, under the provisions relative to this cause in effect at the time of the commission of the crime, to refute the presumption created by the conviction; alternatively, the entire record should be considered for this purpose.

In 11 Am. Jur. 349 p. 1176 - Ex Post facto laws are defined.

> "The Supreme Court of the United States at different times has enunciated somewhat varient definitions of the phrase "ex post facto laws". The early and classic definition is as follows: (1) Every law that makes an action done before the passing of the law, and which was innocent when done, criminal and punishes such action; (2) every law that aggravates a crime, or makes it greater than it was when committed (3) every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed; (4) every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender. An ex post facto law has also been defined as law which punishes that which was innocent when done, which adds to the punishment of that which was criminal, which increased the malignity of a crime, or which narrows the rules of evidence, so as to make conviction more easy."

Ex post facto laws are inhibited by both State and Federal Constitutions.

State vs. Ferrie, 243 La. 416, 144 So. 2d 380, 382.

> "By its provision against ex post facto laws, the constitutions of our Federal and State governments inhibit the enactment of laws relating to criminal matters where fines and forfeitures are affected; they do not contemplate statutes having other operation. Locke v. City of New Orleans, 4 Wall. 172, 71 U.S. 172, 18 La. Ed. 334".

2. The Due Process Issue

The right of attorneys to due process in disbarment proceedings has been established by the opinions of this Court. *Spevack v. Klein,* 385 U.S. 511 (1967). The right to a hearing before the government may deprive a man of a license to engage in a professional pursuit has been affirmed by this Court. *Willner v. Committee on Character and Fitness,* 373 U.S. 96 (1963); *cf. Goldsmith v. Board of Tax Appeals,* 270 U.S. 117, 123, (1926). The right to defend oneself in a hearing, rather than just the right to make an appearance and to observe a tribunal deprive one of his rights, is the true meaning of a hearing within the requirements of due process. This Court, in one of its earliest reversals of state proceedings on the ground of the denial of due process, noted the fundamental essence of due proces to be:

> It never has been doubted by this court or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitu-

> tional requirement of due process of law. The words of Webster, so often quoted, that by "the law of the land" is intended "a law which hears before it condemns." have been repeated in varying forms in a multitude of decisions. In Holden v. Hardy, 169 U.S. 366, 389 (1898) the necessity of due notice and an opportunity of being heard is described as among the "immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard." And Mr. Justice Field, in an earlier case, Galpin v. Page, 18 Wall. [85 U.S.] 350, 368, 369 (1874), said that the rule that no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. "Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered." Citations to the same effect might be indefinitely multiplied, but there is no occasion for doing so. [Powell v. Alabama, 287 U.S. 45, 68 (1932).]

The dissenting opinion of Mr. Justice Dennis of the Supreme Court of Louisiana, in the case of *Louisiana State Bar Association v. Shaheen,* 338 So. 2d 1347, 1355, (1976), collects more recent authorities which have each been grounded upon the proposition stated in the *Powell* case, supra.

It is therefore obvious that the opportunity to be heard

on the basic question, the lack of moral fitness to continue practicing law, is the paramount essential of a fair and full hearing on the propriety of disbarment or other penal sanctions following a conviction. That question can be determined only by an analysis of the conduct underlying the conviction, and not by the fact of conviction alone when the State has provided that disbarment is proper only for a "serious offense", Art. 15 Sec. 8(2) LSBA Arts. of Inc.

The effect of the judgment and opinion of the Court below is to interpose an irrebuttable presumption of guilt, without regard to evidence of innocence, which, in itself, violates due process as determined by the Court in *Leary v. United States*, 395, U.S. 6 (1967), and *Tot v. United States*, 319 U.S. 463, (1943). Where, in this case,there was affirmative proof of the innocence of Appellant of the underlying crime of which he stands convicted in the Federal Court, there was no rational basis for irrebuttable presuming his guilt without providing him an opportunity to show the State Court the error made in the Federal Court.

The plight of Appellant is not isolated or unique. Each of the lawyers convicted with him, except for Leonard E. Hennigan, Jr. whose case is not being considered, have been denied the opportunity to produce any evidence negating guilt the most important mitigating factor of all-while they have been free to present all other useless and ineffectual trivia which the Court would consider mitigating, but not touching the essential elements of the alleged crime. E.G., *Louisiana State Bar Association vs. Loridans*, 338 So. 2d 1338 (La. 1976); *Louisiana State Bar Association v. Shaheen, supra.* The problem is one which is recurring in Louisiana and which will persist unless this Court inter-

venes to define the nature of a hearing on what constitutes a "serious offense."

3. Appellant denied the equal protection of the law.

Appellant shows that others charged and convicted or sentenced on plea with similar offenses have not been proceeded against particular in U.S. vs. Cashio and U.S. vs. Lehman and at least 3 others thereby denying to him the equal protection and administration of the law and showing the Louisiana Bar Association and/or its committees applying and/or interpreting the rules, if they are constitutional of mover thereby causing him irreparable injury and harm and that all proceedings should be stayed pending the action of this Supreme holding court of the United States of America is hearing this appeal.

4. Appellant obtained a full pardon thereby abating all proceedings which was denied therefore appellant denied the due processes of the law.

Further that others obtained a pardon of much more serious crimes, were reinstated as attorney s and the act itself provides that on pardon disciplinary action are vacated or modified and that therefore again petitioner is being denied the equal protection of the law and the due process of the law and is being placed in jeopardy of loosing his property rights, his liberty, and his profession by the unequal administration of the law and the failure to accord to him the equal protection and due process of law and all in violation of the leading case of *Ex Parte Garland*, 71 U.S. 333, 18 L.Ed. 366, 4 Wallace 333.

"A pardon reaches both the punishment prescribed for the offense, and the guilty of the offender; and, when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching. If granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights, and makes him, as it were, a new man, and gives him a new credit and capacity."

"Thus an act of Congress requiring all attorneys to take the oath that they have not engaged in rebellion against the United States, or aided or assisted its enemies, as a condition to the right to practice law in the Supreme Court of the United States, is beyond the power of Congress, as affecting an attorney who has engaged rebellion, and been pardoned by the president. Ex Parte Garland, 71 U.S. 333, 380, 4 Wall 333, 380 18 L.Ed. 366."

This is pointed out because the committee is controlled and regulated by the acts of the Executive division as well as the Legislative and Judicial Divisions as provided by the constitution and hence cannot collaterally attack the pardon in question as has been held in *Taran vs. U.S.* (Minn.), 266 F.2d 561, (566) (1959), Eighth Circuit Court of Appeal cited with approval that an unconditional pardon cannot be collaterally attacked and could only be reviewed in action by State against holder citing *State vs. Meyer*, 228

Minn. 286; 37 N.W. 2d 3, 13 as follows: Under Minnesota law a pardon completely frees the offender from the control of the state and relieves him of all legal disabilities resulting from his conviction and in effect wipes out the conviction itself. Then the court held:

"The State would presumably, if it had wanted to attack the pardon, have had to bring a suit directly in attempted cancellation of it Rathbun v. Baumel, 196 Iowa 1233; 191 N.W. 297; 30 ALR 216. See also 39 Am Jur Pardon Reprieve and amnesty 42."

The Legislature cannot pass an act which overrides or alters pardoning power in *Governor Ex Parte Chambers*, 285 N.W. 862; 69 N.D. 309.

"A pardon releases offender from entire punishment prescribed for offense and from disabilities consequent on his conviction; it reinstates his civil liberties." State ex Herman vs. Powell, 367 P. 2d 553; (556) 1 30 Mont. 533.

In re *Emmons* (Cal) 154 p. 619:

"An attorney cannot be disbarred solely on record of conviction where he has been pardoned."

Scott vs. State (Texas) 25 S.W. 337:

"We are of the opinion that after he received an unconditional pardon, the record of the felony conviction could no longer be used as a basis for

the proceeding provided in article 226. This record when offered in evidence was met with an unconditional pardon and should not therefore properly be said to afford proof of a felony. Having been thus cancelled all its force as a felony conviction was taken away. A pardon falling short of this would not be a pardon, according to the juridial construction which that act of grace has received. Ex Parte Garland 4 Wall 344; 18 LED 366 - Knote vs. U.S. 95 U.S. 149; 24 L.Ed. 442; Young vs. Young 71 Texas 191"

5. Judicial Estopped as a denial of due process.

Estoppel was raised by plea and in answer supported by letter dated March 20, 1973 and order of dismissal treated in original decree and dissent by Justice Summers.

CONCLUSION

For the foregoing reasons this Court should note jurisdiction or postpone jurisdiction and transfer this cause to the Appellate Docket. Alternatively, Appellant prays this Court will treat the papers filed as a petition for a writ of certiorari to the Supreme Court of Louisiana, pursuant to 28 U.S.C. Sec. 2103, grant the said writ and put this cause on the Appellate Docket for plenary consideration, with briefs and oral argument on the issues raised by this Jurisdictional Statement.

Respectfully submitted,

MILTON P. MASINTER
J. LYNN PONDER
FRANK L. KOLES, III

BY: _____

MILTON P. MASINTER
550 Broad Street
New Orleans, Louisiana

_____

LESLIE BARBEE PONDER, JR.
APPELLANT PRO SE

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF TANGIPAHOA

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified within the Parish and State aforesaid personally came and appeared: L.B. PONDER, JR., who after being duly sworn, did depose and say:

That he is the Appellant and petitioner in the foregoing statement to the jurisdiction, that he has read the same, that the allegations of fact contained therein are true and correct to the best of his knowledge, information and belief and that a copy of this application has been served upon both opposing counsel and the Clerk of the Supreme Court of the State of Louisiana to apprise them of the nature of the appeal, the application, the parties and the federal questions involved, where and how raised for the proper consideration of the Supreme Court of the United States of America and in such cases made and provided for.

_____

L. B. PONDER, JR.

Sworn to and subscribed before me this 9th day of March, 1977.

NOTARY PUBLIC

APPENDIX A

NOTICE OF APPEAL AND MOTION TO STAY

SUPREME COURT
STATE OF LOUISIANA

NUMBER 54,456

LOUISIANA STATE BAR ASSOCIATION

VERSUS

LESLIE B. PONDER, JR.

FILED: December 16, 1976 DY. CLERK Phil Trice

NOTICE OF APPEAL AND MOTION TO STAY

On the motion of Respondent, Leslie B. Ponder, Jr., and pursuant to rule 11 of the Supreme Court of the United States, notice of appeal and certiorari is filed herein by Respondent from the entirety of the judgment on rehearing entered on the 8th day of November, 1976 with rehearing denied on . This appeal is based on a denial to Respondent of the equal protection, the due process and the taking of property rights in violation of the Constitutional immunities and privileges as guaranteed by Article 1, Section 10 and Amendments 4, 5, 6, and 14 to the Constitution of the United States of America and Respondent will move in the case entitled, L.B. Ponder, Jr. vs. Louisiana State Bar Association, Number 76-251 before the United States District Court, Eastern District of Louisiana which matter has been held in

abeyance pending the decision of this Honorable Court. Respondent further shows that under Rule 13, he has ninety (90) days to docket his appeal and desires a stay of the mandate of this Court to permit him to docket this appeal and proceed showing that it would be an inequity and an injustice to his clients if he were not permitted or ordered to close out and protect their interests under present assignments and procedures where there are legal rights that Respondent is entitled to as a matter of law, hence moves for a stay of mandate and that legal notice hereof has been given the Louisiana State Bar Association as per certificate.

IT IS ORDERED AND DECREED that this notice be filed and upon consideration of the foregoing that the mandate of this Court is stayed until February 1, 1977.

THUS DONE AND SIGNED at New Orleans, Louisiana on this 17 day of December, 1976.

s/ Joe W. Sanders
CHIEF JUSTICE

JOHN R. MARTZELL
MILTON P. MASINTER
J. LYNN PONDER
FRANK L.KOLES, III

BY: S/ Milton P. Masinter

SUPREME COURT OF LOUISIANA
A TRUE COPY
DEC 17 1976

S/ Phil Trice
Deputy Clerk

AFFIDAVIT

PARISH OF TANGIPAHOA
STATE OF LOUISIANA

Respondent, Leslie B. Ponder, Jr., being duly sworn, deposes and says:

That he is mover in the foregoing motion, that he is entitled to a stay order under the rules, the statutes and the Constitution of the United States of America to permit him to docket his appeal and certiorari with the United States Supreme Court to review suspension ordered by this Court; that under the rules as aforesaid in his opinion he has a period of ninety (90) days to docket his appeal and that he is entitled to a stay of mandate to be issued by this Court to avoid irreparable injury and harm to himself and to his many clients and that a copy of this motion is being delivered via U.S. Mail to Louisiana State Bar Association, that this application would have been filed earlier that Respondent received notice of denial of rehearing and still has had no notice to himself or his attorney, Milton P. Masinter, Esq., J. Lynn Ponder, Frank L. Koles, III, Esq. and has been unable to contact John R. Martzell, Esq.

S/ Leslie B. Ponder, Jr.
LESLIE B. PONDER, JR.

Sworn to and subscribed before me this 16th day of December, 1976.

s/ (Signature illegibile)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded to Mr. Thomas O. Collins, Jr., and Mr. Henry A. Politz 101 Supreme Court Building, 301 Loyola Avenue, New Orleans, Louisiana 70112, on this 16th day of December, 1976.

S/ Milton P. Masinter
OF COUNSEL

APPENDIX B

132 Fla.
340 SOUTHERN REPORTER, 2d SERIES

Ernest Wayne TURNER, Petitioner,

v.

STATE of Florida, Respondent.

No. 76-1395.

District Court of Appeal of Florida, Second District.

Dec. 17, 1976.

A motion by the public defender's office to be relieved as counsel for petitioner because of a conflict of interest between the defense of petitioner and one of his codefendants was denied by the Manatee County Circuit Court, Frank Schaub, J., on the ground that separate attorneys within the public defender's office could properly represent the codefendants. On a petition for writ of certiorari, the District Court of Appeal held that the public defender's office of a given circuit is a "firm" within the discipline of Canon 5, Florida Code of Professional Responsibility, stating that "If a lawyer is required to decline employment or to withdraw from employment under DR5-105, no partner or associate of his or his firm may accept or continue such employment."

Certiorari granted, order quashed, and cause remanded for further proceedings.

1. Criminal Law ⇐641.5

Sixth Amendment guarantee of assistance of counsel includes the right to counsel whose loyalty is not divided between clients with conflicting interests, and it is immaterial whether such counsel is appointed by the court or selected by defendant. U.S.C.A.Const. Amend. 6.

2. Criminal Law ⇐641.5

In the case of appointed counsel, it is especially important for the court to determine that no prejudice will result from multiple representation. U.S.C.A.Const. Amend. 6.

3. Criminal Law ⇐641.5

Sixth Amendment guarantee of the assistance of counsel, which includes the right to counsel whose loyalty is not divided between clients with conflicting interests, contemplates that members of the same firm cannot represent conflicting interests. U.S.C.A.Const. Amend. 6; 32 West's F.S.A. Code of Professional Responsibility, Canon 5(DR5–105).

4. Criminal Law ⇐641.5

The public defender's office of a given circuit is a "firm" within the discipline of Canon 5, Florida Code of Professional Responsibility, stating that "If a lawyer is required to decline employment or to withdraw from employment under DR5–105, no partner or associate of his or his firm may accept or continue such employment." U.S.C.A.Const. Amend. 6; 32 West's F.S.A. Code of Professional Responsibility, Canon 5(DR5–105).

See publication Words and Phrases for other judicial constructions and definitions.

James A. Gardner, Public Defender, Sarasota, and Nevin A. Weiner, Asst. Public Defender, Bradenton, for petitioner.

Robert L. Shevin, Atty. Gen., Tallahassee, and William I. Munsey, Jr., Asst. Atty. Gen., Tampa, for respondent.

PER CURIAM.

We grant herein our gracious common law writ of certiorari.

Petitioner and two codefendants were charged by an information with burglary of a structure in violation of Section 810.02, Florida Statutes (1975). The public defender's office was appointed to represent all three codefendants. After interviewing the three defendants, the public defender's office filed a motion to be relieved as counsel for petitioner because of a conflict of interest between the defense of petitioner and one of the other codefendants. The trial court denied the motion on the ground that separate attorneys within the public defender's office could properly represent the codefendants.

[1, 2] The Sixth Amendment guarantee of the assistance of counsel includes the right to counsel whose loyalty is not divided between clients with conflicting interests. *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942); *Baker v. State*, 202 So.2d 563 (Fla.1967); *Marshall v. State*, 273 So.2d 412 (Fla.2d DCA 1973). It is immaterial whether such counsel is appointed by the court or selected by the

defendant. *Craig v. United States*, 217 F.2d 355 (6th Cir. 1954), but in the case of appointed counsel it is especially important for the court to determine that no prejudice will result from multiple representation. *United States v. Gougis*, 374 F.2d 758 (7th Cir. 1967).

[3] Furthermore, this guarantee contemplates that members of the same firm cannot represent conflicting interests. The concept is articulated in the Disciplinary Rules of Canon 5, Florida Code of Professional Responsibility:

> "DR 5–105 [In re: Clients' Conflicting Interests]
>
> (B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client
>
> . . . . .
>
> (D) If a lawyer is required to decline employment or to withdraw from employment under DR 5–105, no partner or associate of his or his firm may accept or continue such employment."

[4] We view the public defender's office of a given circuit as a "firm" within the discipline of this canon. See also *Allen v. District Court*, 519 P.2d 351 (Colo.1974); *Commonwealth v. Bracey*, 224 Pa.Super. 294, 307 A.2d 320 (1973).

Accordingly, certiorari is granted. The order under review should be, and it is hereby, quashed and the cause is remanded for further proceedings not inconsistent herewith.

McNULTY, C. J., and HOBSON and BOARDMAN, JJ., concur.

134 La. APPENDIX C

340 SOUTHERN REPORTER, 2d SERIES

LOUISIANA STATE BAR ASSOCIATION

v.

Leslie B. PONDER, Jr.

No. 54456.

Supreme Court of Louisiana.

May 17, 1976.

Concurring Opinion Nov. 8, 1976.

Rehearing Denied Dec. 10, 1976.

Disciplinary proceeding was brought. The Supreme Court, Dixon, J., held that disciplinary proceedings could be brought under 1941 Articles of Incorporation of Bar Association; and that conviction of making and subscribing to false income tax returns warrants suspension for period of six months.

Order accordingly.

Summers, J., filed a dissenting opinion; Dennis, J., filed a concurring opinion and was of the opinion that a rehearing should be granted.

1. Criminal Law ⇐1182

Conviction of subscribing to false income tax returns, which conviction was affirmed by the federal Court of Appeals, became final 25 days after United States Supreme Court denied writs. Supreme Court Rules, rule 58, 28 U.S.C.A.

2. Constitutional Law ⇐82, 197

Disciplinary action predicated on 1970 federal conviction does not fail to state cause of action on theory that, because application for reinstatement cannot be filed in less than five years in event of disbarment under 1971 amendment of State Bar Articles of Incorporation, while there was previously no such limitation, the 1971 procedure operates as a bill of attainder and ex post facto law. State Bar Association, Articles of Incorporation, art. 15, § 8, LSA–R.S. following 37:218.

3. Constitutional Law ⇐287

Procedure whereby hearing is held before commissioner as condition precedent to court taking disciplinary action after a final conviction provides due process. State Bar Association, Articles of Incorporation, art. 15, § 8(7), LSA–R.S. following 37:218.

4. Attorney and Client ⇐39

Existence of pardon given by governor addresses itself to subsequent request for modification of penalty and not to issue whether disciplinary action predicated on felony conviction states cause of action.

5. Attorney and Client ⇐39

Conviction of federal felony of subscribing to false income tax returns could form basis of disbarment suit. State Bar Association, Articles of Incorporation, art. 15, § 8, LSA–R.S. following 37:218; 26 U.S.C.A. (I.R.C.1954) § 7206.

6. Attorney and Client ⇐48

Disciplinary proceeding based on final conviction of federal offense is not premature because of failure of committee on professional responsibility to make determination that crime constitutes serious crime and file written report with the court. State Bar Association, Articles of Incorporation, art. 15, §§ 8, 8(7), LSA–R.S. following 37:218.

7. Attorney and Client ⇐48

Disciplinary action based on final conviction of federal offense is not premature because of failure of committee on professional responsibility to afford investigative hearing. State Bar Association, Articles of Incorporation, art. 15, § 8, LSA–R.S. following 37:218.

8. Attorney and Client ⇐46

Dismissal of prior disciplinary action without prejudice by joint motion of parties did not operate to bar subsequent disciplinary proceeding.

9. Attorney and Client ⇐46

Even if some prescription period applies to disciplinary proceedings, disciplinary proceeding instituted within two months of federal conviction becoming final cannot be deemed barred by prescription.

LSA–C.C. art. 3544; LSA–C.Cr.P. art. 578(2, 3).

10. Attorney and Client ⇐49

Letter written by committee on professional responsibility stating that it would reconsider matter under procedure in effect prior to adoption of 1971 Articles of Incorporation of Bar Association constituted an agreement on part of committee to proceed consistently with 1941 procedures. State Bar Association, Articles of Incorporation, art. 15, § 1 et seq., LSA–R.S. following 37:218.

11. Attorney and Client ⇐48

Attorney has no right to hearing by committee on professional responsibility of State Bar Association prior to institution of disciplinary proceeding. State Bar Association, Articles of Incorporation, art. 15, §§ 8, 8(7), LSA–R.S. following 37:218.

12. Attorney and Client ⇐46

Fact that 1941 Articles of Incorporation of Bar Association provided that effect of pardon was to give court discretion to vacate or modify disbarment order and did not set time limit in which application for reinstatement could be filed while 1971 articles prohibit application for reinstatement for five years and do not refer to effect of pardon does not preclude institution of disciplinary proceeding under 1971 articles after committee on professional responsibility agreed to proceed under 1941 articles. State Bar Association, Articles of Incorporation, art. 15, § 1 et seq., LSA–R.S. following 37:218.

13. Attorney and Client ⇐53(1)

Under 1971 Articles of Incorporation of Bar Association providing that certificate of conviction is conclusive evidence of guilt of crime for which convicted, attorney may only produce evidence not inconsistent with essential elements of crime for which he has been convicted and which is relevant to determination whether conduct warrants discipline and extent thereof. State Bar Association, Articles of Incorporation, art. 15, § 8(7)(c, d), LSA–R.S. following 37:218.

14. Attorney and Client ⇐53(2)

Rule providing that certificate of conviction is conclusive evidence of attorney's guilt of crime for which he was convicted is in nature of evidentiary rule. State Bar Association, Articles of Incorporation, art. 15, § 8(7)(c, d), LSA–R.S. following 37:218.

15. Attorney and Client ⇐53(2)

1971 amendment to Articles of Incorporation of Bar Association providing that certificate of conviction is conclusive evidence of guilt of crime for which convicted does not effect substantive change from 1941 articles. State Bar Association, Articles of Incorporation, art. 15, § 8(7)(c, d), LSA–R.S. following 37:218.

16. Attorney and Client ⇐49

Disciplinary action is not so much for punishment of attorney as it is for preservation of integrity of courts and salutary effect upon other members of the bar.

17. Attorney and Client ⇐58

Conviction of making and subscribing to false income tax returns warrants suspension for period of six months. 26 U.S. C.A. (I.R.C.1954) § 7206(1).

John R. Martzell, Milton P. Masinter, New Orleans, for defendant-respondent.

A. Russell Roberts, Chairman, Metairie, Sam J. D'Amico, Baton Rouge, Wood Brown, III, New Orleans, Leonard Fuhrer, Alexandria, Harold J. Lamy, New Orleans, Edgar H. Lancaster, Jr., Tallulah, Henry A. Politz, Shreveport, John F. Pugh, Thibodaux, John B. Scofield, Lake Charles, Thomas O. Collins, Jr., New Orleans, for petitioner (plaintiff).

SUMMERS, Justice.

This proceeding instituted by the Committee on Professional Responsibility of the Louisiana State Bar Association, under this Court's original jurisdiction. La.Const. Art. VIII, § 10 (1921), is based upon a petition for disciplinary action against Leslie B. Ponder, Jr., a member of the bar of this State practicing in Amite, Louisiana. The petition relies upon the authority of Section 8, paragraph (7)(a) through (d) of Article XV of the Articles of Incorporation of the Louisiana State Bar Association as restated March 9, 1971, effective September 1, 1971.[1] The proceeding is founded upon Ponder's 1960–61 violations of Section 7206(1) of Title 26 of the United States Code. He was convicted on February 5, 1970 in the United States District Court for the Eastern District of Louisiana on two counts of making and subscribing income tax returns which were false as to certain material matters. After the conviction was affirmed on appeal to the Fifth Circuit, *United States v. Ponder*, 444 F.2d 816, writs were denied by

sioner permitted the record to remain open until May 26, 1975 for the filing of additional exhibits. He then submitted his report on November 26, 1975, in which the Committee concurred, concluding that the offense of which respondent was convicted was serious enough to warrant disciplinary action by this Court. The matter was heard in this Court and has been submitted for decision.

Before the present proceeding was instituted, the Bar Association filed a petition for disciplinary action against Ponder on April 12, 1972. This prior proceeding was based upon the same February 5, 1970 conviction of violations of Section 7206(1) of Title 26 of the United States Code which formed the basis for the present proceeding. It was also brought upon the authority of Section 8, paragraph (7)(a) through (d) of Article XV of the 1971 Articles of Incorporation of the Louisiana State Bar Association.

Ponder filed a number of motions and exceptions to the Bar Association's petition and the matter was set for argument in this Court on May 10, 1972. Thereafter this Court rendered its judgment on November 6, 1972 denying the motions and overruling the exceptions. *La. State Bar Assn. v. Ponder*, 263 La. 743, 269 So.2d 228 (1972). Ponder's application for a rehearing was refused on December 11, 1972, and a Commissioner was appointed to conduct a hearing for disciplinary action against Ponder. The hearing was set for March 20, 1973.

John R. Martzell, Milton P. Masinter, New Orleans, for defendant-respondent.

A. Russell Roberts, Chairman, Metairie, Sam J. D'Amico, Baton Rouge, Wood Brown, III, New Orleans, Leonard Fuhrer, Alexandria, Harold J. Lamy, New Orleans, Edgar H. Lancaster, Jr., Tallulah, Henry A. Politz, Shreveport, John F. Pugh, Thibodaux, John B. Scofield, Lake Charles, Thomas O. Collins, Jr., New Orleans, for petitioner (plaintiff).

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1. Articles of Incorporation, La.St. Bar Assn., Art. XV, § 8, para. (7)(a) through (d) (1971) provide:

"The following rules shall be applicable when a respondent has been convicted of a crime, to-wit:

. . . . .

"(7) After the conviction has become final, that is, all appeals have been concluded or exhausted, the procedure shall be as follows:

The proceeding is founded upon Ponder's 1960–61 violations of Section 7206(1) of Title 26 of the United States Code. He was convicted on February 5, 1970 in the United States District Court for the Eastern District of Louisiana on two counts of making and subscribing income tax returns which were false as to certain material matters. After the conviction was affirmed on appeal to the Fifth Circuit, *United States v. Ponder*, 444 F.2d 816, writs were denied by the United States Supreme Court on February 22, 1972, 405 U.S. 918, 92 S.Ct. 944, 30 L.Ed.2d 788. The conviction therefore became final 25 days thereafter in accordance with Rule 58 of the Rules of the United States Supreme Court. Ponder's Federal sentence, both pecuniary and otherwise, has

"(a) The Committee will file a petition in the Supreme Court seeking disbarment or any other remedy that the Committee deems appropriate, and the petition will be served upon the respondent in the same manner as in ordinary proceedings.

"(b) When issue is joined by answer by the respondent, a Commissioner will be appointed by the Supreme Court to represent the Court in the same manner as in ordinary proceedings.

"(c) At the hearing before the Commissioner, the certificate of the conviction of the respondent shall be conclusive evidence of his guilt of the crime for which he has been convicted.

"(d) At the hearing based upon a respondent's conviction of a crime, the sole issue to be determined shall be whether the crime warrants discipline, and if so, the extent thereof. At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime." La. R.S. 37:218 Chapter 4–Appendix, p. 47.

been fully satisfied. He received a full pardon from the Governor of Louisiana on March 6, 1972.

This action was instituted on February 19, 1974 by the Louisiana Bar Association through its Committee on Professional Responsibility. A number of exceptions to the petition were filed on Ponder's behalf. Opposition to these was filed by the Committee, and the exceptions were referred to the merits. Ponder then answered, and the Court appointed the Honorable Richard F. Knight as Commissioner to take the evidence and report his findings of fact and conclusions of law. After hearing the evidence on February 26, 1975, the Commissioner permitted the record to remain open until May 26, 1975 for the filing of additional exhibits. He then submitted his report on November 26, 1975, in which the Committee concurred, concluding that the offense of which respondent was convicted was serious enough to warrant disciplinary action by this Court. The matter was heard in this Court and has been submitted for decision.

Before the present proceeding was instituted, the Bar Association filed a petition for disciplinary action against Ponder on April 12, 1972. This prior proceeding was based upon the same February 5, 1970 conviction of violations of Section 7206(1) of Title 26 of the United States Code which formed the basis for the present proceeding. It was also brought upon the authority of

Section 8, paragraph (7)(a) through (d) of Article XV of the 1971 Articles of Incorporation of the Louisiana State Bar Association.

Ponder filed a number of motions and exceptions to the Bar Association's petition and the matter was set for argument in this Court on May 10, 1972. Thereafter this Court rendered its judgment on November 6, 1972 denying the motions and overruling the exceptions. *La. State Bar Assn. v. Ponder*, 263 La. 743, 269 So.2d 228 (1972). Ponder's application for a rehearing was refused on December 11, 1972, and a Commissioner was appointed to conduct a hearing for disciplinary action against Ponder. The hearing was set for March 20, 1973.

In the meantime, however, on March 10, 1973, Ponder filed a petition for a writ of certiorari in the Supreme Court of the United States to review this Court's judgment of November 6, 1972. In that petition he complained of several violations of federal constitutional rights.

Then, on March 20, 1973, a letter was written by the Committee to Ponder and his counsel to set forth its understanding with reference to the filing of a joint motion with Ponder to dismiss the disciplinary proceeding instituted on April 12, 1972, then pending before this Court.

The letter set forth that the Committee would "reconsider the entire matter under Article XIII of the Articles of Incorporation of the Louisiana State Bar Association,

which was the controlling procedure prior to the adoption of Article XV of the Articles of Incorporation, which became effective September 1, 1971." In addition to the procedures outlined in Article XIII, Section 12, of the Articles of Incorporation, which became effective in 1941[2] and which remained in effect until superseded by the 1971 articles, the Committee agreed to afford Ponder an informal hearing before filing any pleadings with this Court.

In consideration of the foregoing, the letter further stipulated that Ponder and his counsel would dismiss or withdraw the petition for writ of certiorari he had lodged in the Supreme Court of the United States on March 10, 1973. In addition, Ponder would forego any action against the Bar Association in any court, specifically the United States District Court for the Eastern District of Louisiana, predicated upon the proceeding then pending against Ponder in this Court.

Ponder agreed to these terms. To implement the agreement, a joint motion was

2. Article XIII, Sec. 12, Articles of Incorporation, La.St. Bar Assn. (1941) provides:

"Whenever any member of the bar shall be convicted of a felony and such conviction shall be final, the Committee may present to the Supreme Court a certified or exemplified copy of the judgment of such conviction, and thereupon the court may, without further evidence, if in its opinion the case warrants such action, enter an order striking the name of the person so convicted from the roll of attorneys and cancelling his license to practice law in the State of Louisiana. Upon the person so convicted being pardoned by the President of the United States or Governor of this State, the Court, upon application may vacate or modify such order of disbarment."

presented to this Court on the same day and the motion to dismiss was granted without prejudice. In addition, on March 26, 1973, Ponder withdrew the petition for certiorari in the United States Supreme Court. Thereafter, on February 19, 1974 the present proceeding was instituted.

It is Ponder's contention that the pending proceeding under Article XV, Section 8, paragraph (7)(a) through (d) of the 1971 Articles of Incorporation, is contrary to the terms of the letter of March 20, 1973, whereby it was agreed and understood that the Committee would, if it reconsidered the matter, do so under Article XIII of the 1941 articles in effect at the time of the 1960–61 violations of Section 7206(1) of Title 26 of the United States Code.

He asserts, moreover, that Section 8 of Article XV of the 1971 articles, as applied against him, is a bill of attainder and an ex post facto law in violation of the Federal and State Constitutions. The basis for this latter argument is the claim that Article XV of the 1971 articles enlarges the penalty for disbarment to a mandatory minimum of five years. He also argues that to apply the 1971 articles to an offense which was committed before their effective date is, in effect, a bill of attainder and ex post facto law.

Although the latter argument is answered by the Commissioner, there appears to be no clear cut decision disposing of the contention that the Committee has failed to adhere to its letter agreement of March 20, 1973. The Committee, however, answers this contention by asserting: first, the proceeding followed by the Committee was totally consistent with Article XV of the 1971 articles and was in no way inconsistent with former Article XIII of the 1941 articles; secondly, the reference to Ponder not filing an action in Federal Court against, inter alia, the Committee, an individual members thereof, has no validity for, they assert, Ponder has in fact filed a complaint seeking an injunction and $750,000 in damages against the Bar Association, the Committee and its members, in pleadings entitled, *L. B. Ponder, Jr. v. Louisiana State Bar Association, et al.*, No. 76–251 on the docket of the United States District Court for the Eastern District of Louisiana.

The first answer of the Committee is not well-founded. It may perhaps be said that the instant proceeding is similar in some

respects to proceedings conducted under Article XIII of the 1941 articles, but there are important and significant substantive differences.

Section 12 of Article XIII of the 1941 articles provides that the Court may, upon application, vacate or modify an order of disbarment "whenever any member of the bar shall be convicted of a felony" (without specifying whether it be a state or federal conviction) and, by reason thereof, his name has been stricken from the rolls of attorneys and his license cancelled, and he is "pardoned by the President of the United States or Governor of this State." While this provision does not require that the disbarment be vacated or modified when a pardon has been granted, there is a strong implication in its content that a pardon warrants setting aside a disbarment. See La.Const. Art. V, § 10 (1921); La. R.S. 15:572.1; Pardons, 1856, 7 Op.Atty.Gen. of U.S. 760. See also, Effect of Pardons, 1857, Op.Atty.Gen. U.S. 284; *In re Dileo*, 307 So.2d 362 (La.1975).

Thus, arguably, Article XIII of the 1941 articles may have been advantageous to Ponder insofar as it indicates that a pardon warrants setting aside a disbarment. On the other hand, no reference to the effect of a pardon is found in Article XV of the 1971 articles under which the instant proceedings are being conducted. By these proceedings under the 1971 articles Ponder is deprived of the advantage which would result from the recognition that a pardon was a basis for vacating a disbarment—an advantage to which he would be entitled under Article XIII of the 1941 articles. No adjudication of his rights under Article XIII, Section 12 of the 1941 articles has ever been made.

Furthermore, by the provisions of Section 12 of Article XV of the 1971 articles "[a] minimum of five years must elapse following disbarment before the disbarred attorney may apply for reinstatement." Under the provisions of Article XIII of the 1941 articles, which the Committee agreed would govern any proceeding against Ponder, there is no minimum time requirement which must elapse following disbarment before the disbarred attorney may apply for reinstatement. See Section 15, Article XIII, Articles of Incorporation (1941). By conducting these proceedings under the 1971 Articles, instead of the 1941 Articles, therefore, Ponder is denied the right to apply for reinstatement until the lapse of five years after disbarment. The provisions of the 1971 articles are therefore more onerous in this respect.

The Committee's second answer is also without merit. It is true that Ponder has filed suit against the Committee as set forth in its argument. However, what the Committee has failed to note is the fact that Ponder did not file this suit until January 27, 1976, long after the Committee found it unnecessary to comply with its letter agreement of March 20, 1973 by filing the instant proceeding under the 1971 article on February 19, 1974. The matter would be viewed in a different light if Ponder had been the first to repudiate the agreement, but, under the circumstances, what he could not use as a sword, he may use as a shield. In the full context of the proceeding his resort to suit does not deny him the right to invoke the agreement of March 20, 1973.

It may be that the Committee decided after the March 20, 1973 agreement, and the dismissal of the first proceeding, that it was unable to proceed under Article XIII of the 1941 articles because the conviction upon which the action was based did not become final until after Article XIII of the 1941 articles had been superseded by the 1971 articles. And, since finality of the conviction was a prerequisite to disciplinary action on that ground, no disciplinary action was available under Article XIII of the 1941 articles. *La. State Bar Assn. v. Ponder*, 263 La. 743, 269 So.2d 228 (1972). Apparently, feeling that proceedings under Article XV of the 1971 articles were essentially the same and would not unduly prejudice Ponder, as the Committee contends, a decision was made to bring the disciplinary

proceedings under the 1971 articles. In this respect the committee erred because there were significant differences between the articles of 1941 and 1971 as pointed out above.

Whatever the Committee's thinking on the subject may have been, even if the effect of the letter agreement of March 20, 1973 was to deprive the Committee of valid authority to bring disciplinary proceedings, we believe it is important to insist upon compliance with the agreement. If the Committee is of the opinion that the letter agreement did not have that effect, the Committee should proceed under Article XIII of the 1941 articles in accordance with the letter agreement of March 20, 1973.

For the reasons assigned, these proceedings are dismissed without prejudice.

DIXON and DENNIS, JJ., dissent.

DIXON, Justice (dissenting).

I respectfully dissent.

The majority has found that the Louisiana State Bar Association, through its Committee on Professional Responsibility, has failed to comply with its agreement with defendant. For that reason, this proceeding against him is dismissed. I cannot agree.

The letter agreement of March 20, 1973 [1] simply stated that the first action against

1. "The Committee will, through its Counsel, join with Leslie B. Ponder, Jr., through his counsel, in filing the attached 'Joint Motion and Order to Dismiss Without Prejudice.' Thereafter, *the Committee shall reconsider the entire matter* under Article XIII of the Articles of Incorporation of the Louisiana State Bar Association which was the controlling procedure prior to the adoption of Article XV of the Articles of Incorporation which became effective September 1, 1971. In addition to the procedures outlined in said Article XIII, the Committee shall, prior to filing any pleadings with the Supreme Court, afford Leslie B. Ponder, Jr. an informal hearing before the Committee." (Emphasis added).

Ponder would be withdrawn, and the matter thereafter reconsidered by the Committee under Article XIII of the Articles of Incorporation, which was the controlling procedure prior to the adoption of Article XV in 1971 and at the time of the commission of the offenses by defendant. Article XIII, § 12 (1941) provided:

> "Whenever any member of the bar shall be convicted of a felony and such conviction shall be final, the Committee may present to the Supreme Court a certified or exemplified copy of the judgment of such conviction, and thereupon the court may, without further evidence, if in its opinion the case warrants such action, enter an order striking the name of the person so convicted from the roll of attorneys and cancelling his license to practice law in the State of Louisiana. Upon the person so convicted being pardoned by the President of the United States or Governor of this State, the Court, upon application may vacate or modify such order of disbarment."

Article XV, § 8, par. 7(a)–(d) (1971), in effect at the time the instant proceedings were filed, and under which (according to the petition) this proceeding was brought, provides:

"The following rules shall be applicable when a respondent has been convicted of a crime, to-wit:

. . . . .

"(7) After the conviction has become final, that is, all appeals have been concluded or exhausted, the procedure shall be as follows:

"(a) The Committee will file a petition in the Supreme Court seeking disbarment or any other remedy that the Committee deems appropriate, and the petition will be served upon the respondent in the same manner as in ordinary proceedings.

"(b) When issue is joined by answer by the respondent, a Commissioner will be appointed by the Supreme Court to represent the Court in the same manner as in ordinary proceedings.

"(c) At the hearing before the Commissioner, the certificate of the conviction of the respondent shall be conclusive evidence of his guilt of the crime for which he has been convicted.

"(d) At the hearing based upon a respondent's conviction of a crime, the sole issue to be determined shall be whether the crime warrants discipline, and if so, the extent thereof. At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime."

Respondent has been denied none of the procedures provided in Article XIII, § 12 by the Committee's actions in bringing the proceeding under Article XV. Respondent was given an informal hearing. The record was left open for three months after the Commissioner finished hearing evidence. Indeed, under the old article, the Committee could submit a certified copy of the conviction to this court which could, without more, order disbarment.

The majority is unduly concerned with provisions in Article XIII, § 12 (1941) concerning pardon. It is true that Article XIII, § 12 provides that disbarment may be vacated or modified upon a pardon; however, this provision did not require that this court vacate the disbarment upon a pardon. Nor is there anything in Article XV, under which this proceeding was brought, which would prevent us from considering the fact of the pardon if and when respondent made an application for reinstatement. Nothing in the record shows that the Committee failed in any way to comply with its stated intention to "reconsider the entire matter under Article XIII . . . which was the controlling procedure prior to the adoption of Article XV . . ." The fact that the petition stated that it was brought under Article XV of the 1971 Articles, the only articles in effect, demonstrates strict compliance by the Committee with the prior unanimous opinion of this court.

Before the letter agreement of March 20, 1973 was written this court considered and decided unanimously many of the questions urged again by defendant. *Louisiana State*

Bar Association v. Ponder, 263 La. 743, 269 So.2d 228 (1972). Specifically, and most importantly, we decided that the first petition for disbarment, filed April 12, 1972 after the United States Supreme Court denied defendant's application for writs after his conviction for felonious violation of income tax laws, was properly brought under the only disciplinary provision then in force, Article XV, § 8(7) of the Articles of Incorporation of 1971, saying:

"The current Articles of Incorporation of the Louisiana State Bar Association became effective on September 1, 1971. Because respondent's conviction became final after this date, the committee properly instituted this disciplinary action pursuant to Article 15, Section 8(7) of the Articles of Incorporation of 1971. However, under the articles of incorporation as they formerly existed or as they presently exist, respondent has no right to a hearing by the committee prior to the institution of disciplinary proceedings in this court. Respondent's hearing is held before a commissioner appointed by this court after the committee institutes the disciplinary proceeding by petitioning this court for respondent's disbarment. Sections 7, 12, Articles of Incorporation of 1941; Article 15, Section 8(7), Articles of Incorporation of 1971; *Louisiana State Bar Association v. Rayl*, 208 La. 531, 23 So.2d 206.

"Thus, respondent's exception of prematurity is without merit." 269 So.2d 228, 229–230.

The majority now tells the Committee it should not have proceeded under Article XV of 1971, because of the letter of March 20, 1973.

The letter of March 20, 1973 did not constitute an agreement by the Committee that all subsequent proceedings would be governed by Article XIII of the 1941 articles—no longer in effect. Both parties to that letter were perfectly informed that this court had decided that proceedings under Article XV of the 1971 articles were properly instituted. It is most regrettable that the majority now accuses and wrongfully convicts its own committee of failure to comply with its agreement.

The majority finds that defendant loses two advantages when the proceedings are brought under Article XV of 1971 instead of Article XIII of 1941: (1) Article XV of 1971 does not refer to the effect of a pardon; (2) Article XV of 1971 does not permit application for reinstatement until after five years.

First: we have previously decided in this case that a pardon is not an absolute defense to disbarment:

"Also, a pardon is not an absolute defense to disbarment as respondent contends. *People ex rel. Colorado Bar Association v. Burton*, 39 Colo. 164, 88 P. 1063. See, *State v. Gowland*, 189 La. 80, 179 So. 41; *People ex rel. Deneen v. Gilmore*, 214 Ill. 569, 73 N.E. 737; *Verneco, Inc. v. Fidelity & Casualty Company of New York*, 253 La. 721, 219 So.2d 508 (dictum)." 269 So.2d 228, 230.

Even under the provisions of Article XIII of 1941, the only effect of a pardon, under long-standing jurisprudence, was not to prevent disbarment, but was to permit the disbarred lawyer to apply to this court for a modification or vacation of the order of

disbarment. The existence of a pardon addresses itself to this court, not to the committee, and affects the penalty, not the proceedings. The penalty in a disbarment case is the exclusive province of this court.

Second: before 1971, there was no time limit fixed before a disbarred lawyer could petition for reinstatement; after 1971, a lawyer whose misconduct resulted in disbarment (instead of reprimand or suspension) was required to wait at least five years to apply for reinstatement.

In this case, because of a variety of sanctions available to the court in disciplinary proceedings, the fact that defendant could not apply for reinstatement in less than five years in the event of disbarment is presently irrelevant. Disbarment is not the only possible sanction; every relevant factor will have been considered by this court and we might well decide on suspension instead of disbarment. If we should decide on a penalty of less than disbarment, there is no time limit in the present articles for applying for a modification of the decree. In any event, if we construed the letter of March 20, 1973 in some way to permit defendant to apply for reinstatement before five years elapsed from disbarment, we should not simultaneously hold that Article XI, § 12 of 1971 would prohibit application for reinstatement for five years.

If the true construction of the letter of March 20, 1973 is that defendant may, if disbarred, apply for reinstatement in less than five years, it would be much more sensible for this court to grant that right to the defendant than to dismiss these proceedings.

Defendant's conviction is final. The offense was serious. There is no defense, except in mitigation. If a majority of this court believes defendant has suffered enough for the crimes committed, we should so hold and not, upon such insubstantial grounds, shift the blame to our voluntary committee of honorable and diligent lawyers.

ON REHEARING

DIXON, Justice.

[1] This is a disciplinary action instituted by the Louisiana State Bar Association, through its Committee on Professional Responsibility, against Leslie B. Ponder, Jr., a member of the bar of the State of Louisiana who practices law in Amite, Louisiana. The basis for this action is respondent's conviction on February 5, 1970 by a jury in the United States District Court for the Eastern District of Louisiana of two counts of wilfully making and subscribing income tax returns which were false as to certain material matters. After respondent's conviction was affirmed by the Fifth Circuit, *United States v. Ponder*, 444 F.2d 816, the United States Supreme Court on February 22, 1972 denied writs, 405 U.S. 918, 92 S.Ct. 944, 30 L.Ed.2d 788. Therefore, the conviction became final twenty-five days thereafter pursuant to United States Supreme Court Rule 58. On original hearing this court dismissed the proceedings without prejudice primarily due to our construction of a letter agreement confected between the Committee on Professional Responsibility and respondent. We granted a rehearing to reconsider the effect of this letter.

This action was instituted on February 19, 1974. Respondent filed a number of exceptions which, by order of this court dated September 4, 1974, were referred to the merits. Respondent then answered and the court appointed Richard F. Knight as Commissioner to hear the evidence and report his findings of fact and conclusions of law. After hearing the evidence the Commissioner submitted his report on November 26, 1975, in which the Committee concurred, concluding that the offense of which respondent was convicted was serious enough to warrant disciplinary action.

EXCEPTIONS

The extended procedural history of this case is discussed in our original opinion and need not be reiterated here. Due to our disposition of this case in the original opinion we did not dispose of respondent's exceptions. Although similar exceptions were disposed of adversely to respondent in the first *Ponder* decision, *Louisiana State Bar Association v. Ponder*, 263 La. 743, 269 So.2d 228 (1972), since that proceeding was dismissed without prejudice by joint motion of the parties, we will discuss them anew.

I. Exceptions of No Right or Cause of Action

Respondent first alleges that there is no cause of action because Section 8 of Article XV of the Articles of Incorporation of the Louisiana State Bar Association as amended effective September 1, 1971, as applied against the respondent, is a bill of attainder and an ex post facto law in violation of the

United States and Louisiana Constitutions. The basis for this argument is the fact that there was no time limit fixed before a disbarred lawyer could petition for reinstatement under the pre-1971 Articles of Incorporation whereas under the amended articles a lawyer whose misconduct resulted in disbarment is required to wait at least five years to apply for reinstatement.

[2] Since this court has a number of options available in disciplinary proceedings, the fact that respondent could not apply for reinstatement in less than five years in the event of disbarment is presently irrelevant. If we should decide on a penalty of less than disbarment, there is no time limit in the present articles for applying for a modification of the decree. In addition, as the Commissioner noted, the respondent's argument "assumes that the result of the disciplinary action will be disbarment by the court and further assumes an application for reinstatement. At best, such a suggestion addresses itself to the penalty to be assessed should it be concluded that disciplinary action is warranted. It does not address itself to the basic issue of whether a disciplinary action predicated on a conviction states a cause of action."

[3] Respondent next alleges that there is no right or cause of action because the petition fails to show that respondent was accorded due process of law. Respondent refers to certain provisions in paragraphs one through five of Section 8 of Article XV of the present Articles of Incorporation which provide that the Committee shall make a determination as to whether the

crime of which the attorney has been convicted constitutes a serious crime, file a written report with this court setting forth its findings, etc. The cited provisions only apply when the Committee proceeds before the conviction becomes final and seeks an interim suspension. However, when the Committee does not petition this court until the conviction becomes final, as the instant case, the proceeding is controlled by paragraph seven of Section 8 of Article XV. The provisions in paragraph seven provide the respondent with a hearing before a Commissioner as a condition precedent to this court taking disciplinary action. Thus, this procedure, which was followed in this case, provides due process.

[4, 5] Respondent further contends that there is no cause or right of action because the respondent has received a pardon from the Governor of the State of Louisiana and that the crime for which he was convicted is not a crime under the laws of the State of Louisiana. The effect of a pardon, under the pre-1971 articles, was not to prevent disbarment, but was to permit the disbarred lawyer to apply to this court for a modification or vacation of the order of disbarment. Thus, the existence of the pardon addresses itself to a subsequent request for a modification of the penalty and not to the issue of the existence of a cause of action. In addition, the crime of which respondent was convicted is a felony. 26 U.S.C. § 7206. The Articles of Incorporation clearly provide that a federal felony can form the basis of a disbarment suit. Article XV, § 8, Articles of Incorporation of 1971; Article XIII, § 12, Articles of Incorporation of 1941.

Respondent's last argument in support of his exceptions of no cause or right of action deals with the effect of the letter agreement referred to above and will be disposed of in our discussion of the merits, infra.

II. Exception of Prematurity

[6] Respondent alleges that the Committee on Professional Responsibility must make a determination that the crime constitutes a serious crime and must file a written report with this court and until it does so, proceedings in this court are premature. Again, respondent relies upon the first five paragraphs of Section 8 of Article XV which provide the procedure for instituting a proceeding to have an attorney suspended pending the finality of the conviction. The instant proceeding is based on paragraph seven of Section 8 of Article XV and is, therefore, not premature.

[7] It is also argued that this action is premature because the Committee failed to afford respondent an investigative hearing in accordance with *Louisiana State Bar Association v. Ehmig*, 277 So.2d 137 (La.1973). In *Ehmig* we clearly held that "before the Committee on Professional Responsibility can petition the Court for suspension of an attorney whose conviction is *not final* under Section 8 of Article XV, Articles of the Louisiana State Bar Association, it must hold a contradictory hearing and determine that the conviction involves a 'serious crime.'" (Emphasis added). 277 So.2d at 141. Thus, this exception is without merit.

III. Other Exceptions

[8] Respondent's exception of vagueness is based on the contention that the petition is too vague and indefinite as to the Committee's determination that the crime involved is a serious crime reflecting upon respondent's moral fitness to practice law. Since this determination is not required under paragraph seven of Section 8 of the articles, the exception lacks merit. In addition, the petition clearly states what crime the respond was convicted of committing. Respondent's exception of res judicata is not clearly drafted. Assuming that respondent is arguing that the previous dismissal of the first *Ponder* case operates to bar the present proceeding, the exception is without merit. The previous action was dismissed without prejudice to either party and in no way bars the present suit.

[9] Respondent also avers that these proceedings are barred by prescription. It is argued that this is a quasi-criminal proceeding and the prescriptive periods provided in C.Cr.P. 578(2) and (3) are applicable. Alternatively, respondent argues that the ten year prescriptive period provided by C.C. 3544 applies. Assuming that there is some prescriptive period applicable to disciplinary proceedings founded upon a conviction of a crime, it would not begin to run until the conviction had become final since, until that point, the Committee could not proceed under paragraph seven of Section 8. Since the initial proceeding was instituted within two months of the finality of the conviction, the time periods referred to by respondent did not run. Respondent's argument that the Committee is judicially

estopped due to certain language in another suit is so unclear and without merit as not to require written disposition.

MERITS

As mentioned in our original opinion, before the institution of the instant proceeding the Committee filed a petition for disciplinary action against respondent on April 12, 1972. This prior proceeding was based upon the same February 5, 1970 conviction as the instant case and was brought under Section 8, paragraph 7(a)–(d) of Article XV of the 1971 Articles of Incorporation. This court disposed of certain exceptions filed in that suit on November 6, 1972. *Louisiana State Bar Association v. Ponder,* supra. Ponder then filed a petition for a writ of certiorari in the United States Supreme Court to review the November 6 judgment. On March 20, 1973 a letter was written by the Committee to Ponder setting forth the Committee's understanding as to the filing of a joint motion to dismiss the disciplinary proceeding instituted on April 12, 1972. The letter stated that the Committee would "reconsider the entire matter under Article XIII of the Articles of Incorporation of the Louisiana State Bar Association which was the controlling procedure prior to the adoption of Article XV of the Articles of Incorporation which became effective September 1, 1971." In addition, the Committee agreed to afford Ponder an informal hearing before the Committee prior to the institution of any new proceeding.

In consideration of the foregoing, Ponder agreed to dismiss the application then pending before the United States Supreme Court and to forego any action against the Bar Association in any court. Ponder agreed to the terms of the letter and, on joint motion of both parties, this court dismissed the proceedings without prejudice.

[10] Respondent contends that due to this agreement the petition instituting the instant action discloses no right or cause of action because the Committee agreed to proceed under Article XIII of the pre-1971 articles. We construe this letter to be an agreement on the part of the Committee to proceed consistently with the 1941 procedures. Thus, to the extent the present procedures are not inconsistent with the previous articles, by following the existing procedures the Committee has complied with its agreement. In addition, at the Commissioner's hearing respondent objected to proceeding under the 1971 Articles of Incorporation because he alleged that the 1971 amendments changed the substantive law which previously obtained. These contentions can be disposed of together since they essentially present the same issue of what procedures did the 1941 articles provide that are not provided in the 1971 articles.

[11] Under the Articles of Incorporation as they formerly existed and as they presently exist, respondent has no right to a hearing by the Committee prior to the institution of disciplinary proceedings in this court. Respondent's hearing is held before a Commissioner appointed by this court after the Committee institutes the disciplinary proceeding by petitioning this court for disciplinary action. Article XIII, §§ 7, 12, Articles of Incorporation of 1941; Article XV, § 8(7), Articles of Incorporation of 1971. In addition, since respondent was afforded an informal hearing prior to the institution of the instant proceeding, he has no cause to complain that this advantage was not afforded him.

There remains to be discussed the three primary differences between the 1941 and 1971 Articles of Incorporation: (1) Article XV of 1971 does not refer to the effect of a pardon; (2) Article XV of 1971 does not permit a disbarred lawyer to apply for reinstatement for five years; (3) the jurisprudence construed the 1941 articles to the effect that a conviction is only prima facie evidence of misconduct whereas the 1971 articles provide that such conviction is conclusive evidence of same.

[12] As discussed above, the 1941 articles only provided that the effect of a pardon was to give the court discretion, upon the disbarred attorney's application, to "vacate or modify such order of disbarment." Article XIII, § 12, Articles of Incorporation of 1941. Thus, it was not an absolute defense to disbarment. In addition, nothing in the present articles precludes this court from considering the fact of the pardon if and when respondent made an application for reinstatement. Thus, whether the effect of the letter was to allow the respondent, if disbarred, to apply for a modification of the decree and whether this differ-

ence in the 1941 and 1971 articles is a "substantive" change is presently irrelevant. In like manner, the question of whether the true construction of the letter is that respondent may, if disbarred, apply for reinstatement in less than five years and whether this five year period was a "substantive" change is not presently before this court. These questions can be resolved at the proper time and do not affect the Committee's decision in this case to proceed under the existing Articles of Incorporation.

The third difference alluded to above deals with the nature of the evidence the attorney could present in his defense to a disciplinary action. The 1921 Constitution granted the Supreme Court exclusive original jurisdiction of disbarment cases "involving misconduct of members of the bar . . . ." La.Const.1921, Art. 7, § 10.[1] Pursuant to this grant of jurisdiction, this court in 1941 adopted rules governing disciplinary proceedings. Article XIII, § 12 provided the procedure in cases where the mis-

1. ". . . The Supreme Court has control of, and general supervisory jurisdiction over all inferior courts.
"It has exclusive original jurisdiction of disbarment cases *involving misconduct of members of the bar*; with the power to suspend or disbar under such rules as the court may adopt; of suits for the removal from office of judges of courts of record as elsewhere provided in this Constitution; . . . " (Emphasis added).

conduct of the attorney resulted in a conviction.[2] In *Louisiana State Bar Association v. Connolly*, 201 La. 342, 9 So.2d 582 (1942), the court was presented with the issue of the constitutionality of § 12. The court properly held that this section did not exceed the court's authority under the 1921 Constitution by establishing a separate ground of disbarment not based on misconduct of the attorney because it was merely the misconduct as evidenced by the conviction that created the constitutional cause of action on which this court could act. The court felt constrained, however, to further hold that the conviction was only prima facie evidence of misconduct and, thus, the burden of proof was put upon the attorney to prove that such misconduct as necessi-

2. "Whenever any member of the bar shall be convicted of a felony and such conviction shall be final, the Committee may present to the Supreme Court a certified or exemplified copy of the judgment of such conviction, and thereupon the court may, without further evidence, if in its opinion the case warrants such action, enter an order striking the name of the person so convicted from the roll of attorneys and cancelling his license to practice law in the State of Louisiana. Upon the person so convicted being pardoned by the President of the United States or Governor of this State, the Court, upon application may vacate or modify such order of disbarment."

tates disciplinary action did not in fact occur. See also *Louisiana State Bar Association v. Cox*, 250 La. 755, 199 So.2d 534 (1967); *Louisiana State Bar Association v. Cawthorn*, 223 La. 884, 67 So.2d 165 (1953); *Louisiana State Bar Association v. Connolly*, 206 La. 883, 20 So.2d 168 (1944).

[13] The 1971 amendment provides that the certificate of conviction is conclusive evidence of the attorney's guilt of the crime for which he was convicted. Articles of Incorporation of 1971, Article XV, § 8(7)(c). Consistently, therefore, the attorney may only produce evidence not inconsistent with the essential elements of the crime for which he has been convicted and which is relevant to the determination of whether the conduct warrants discipline and the extent thereof. Articles of Incorporation of 1971, Article XV, § 8(7)(d).

[14, 15] The *Connolly* case construed the former rule to be one of evidence affecting the burden of proof. See *Louisiana State Bar Association v. Connolly*, 206 La. 883, 20 So.2d 168 (1944). Likewise, the present rule (providing that the conviction is conclusive) is in the nature of an evidentiary rule. Thus, the 1971 amendment did not effect a substantive change since the substance of both rules related to the disciplining of an attorney for misconduct which was the subject of a criminal prosecution; the only change was in the weight to be given the certificate as evidence of such misconduct.

The above analysis, however, does not dispose of the effect of the letter agreement confected between the parties. The Committee did not repudiate this agreement. It accorded every advantage to re-

spondent and none of the evidence which respondent offered in defense was rejected by the Commissioner. The Committee was properly of the opinion, however, that under the existing procedure the evidence offered by respondent was inadmissible as much of it was inconsistent with the essential elements of the crime for which respondent was convicted. However, due to the letter agreement we will review the evidence in light of the former jurisprudence. For convenience we adopt the Commissioner's summary of the evidence which we find to be correct:

"This evidence was elicited mainly through the testimony of the respondent and the testimony of J. Lynn Ponder, respondent's son and law partner, as well as his co-counsel in his criminal trial. This evidence centers around respondent's contention that the Internal Revenue Service did not allow him certain expenses he testified he incurred in order to produce his income during the two questioned years. Much of the dispute was over the amount of legal fees the respondent received from handling certain plaintiffs' cases on a contingency basis. The respondent contends that he paid certain expenses involved in these cases such as expenses for medical reports, appearance of doctors as witnesses, expenses paid to investigators, etc., in cash. Respondent testified that it was the custom in Tangipahoa Parish to pay for such expenses in cash and that he would show these expenses on the file cover of his file for each case. He stated that the Internal Revenue Service and the witnesses who tes-

tified against him in trial simply would take the amount of settlement or recovery awarded in a plaintiff's case and if he was to receive it on a ⅓rd contingency basis they would take ⅓rd of the full amount without allowing any deductions for expenses unless he had checks to prove the expenses. The evidence also shows that there was a dispute in this case over whether or not certain funds he received from a corporation in which he held stock was dividend income or was paid to him as a director fee since he was on the Board of Directors of the corporation.

"Affidavits of Mrs. Mathilda Ricks and Mrs. Homer Smith show that they were employees in Mr. Ponder's law office in the years in question. Mrs. Ricks' affidavit states that she assisted Mrs. Smith in the preparation of the income tax returns and that they were instructed by Mr. Ponder to include everything and in the event of a doubt as to any item to include it and that the schedule of fees were taken from the files and were computed on a net basis after deducting expenses, costs, advances and other expenses incurred in the prosecution of the claims or cases. Mrs. Smith's affidavit also states that she completed the fee schedule returns from the files on a cash basis of a total fee less advances, costs and incidental expenses in the presentation and completion of the cases. She also states that the returns for the tax years 1960 and 1961 were true and correct to the best of her ability, knowledge and information and that she filled out the returns for Mr. Ponder and his wife and neither told her what to include or what to exclude

except that Mr. Ponder advised her to include everything and thereafter to add 5% of gross fees, rounded off, to cover any error in computation. In fact, the testimony of the respondent shows that Mrs. Homer Smith signed his signature to the returns.

"The respondent introduced the depositions of Walter A. Walsh and Nicholas Cefalu both of which depositions were taken in preparation for his criminal trial. Mr. Walsh's deposition shows that during 1960 and 1961 he was a private investigator and from time to time did investigative work for Mr. Ponder and was paid in cash for this work. Mr. Cefalu's deposition dealt with the dealings of the Long Beach Motor Hotel Corporation and whether or not certain money Mr. Ponder received was director's fees or dividends.

"The respondent testified that he had practiced law since March 3, 1931 and in all of that time he had never been reprimanded by the Bar Association. There had been several letters directed against him but all of these letters were settled prior to any hearings or anything else except for one in which a hearing was held. After that hearing, the charges were dismissed against him. Mr. Earl Cefalu testified that he was Mayor of the City of Amite and that he had known respondent all his life. He testified that among other things, the respondent was a member of a Baptist Church and the Rotary Club in Amite and that he was familiar with Mr. Ponder's reputation with other people in the Amite community and that this reputation was good. He further testified that Mr. Ponder had handled his legal work and the legal work for all the members of his family and they were satisfied with his representation.

"Respondent also introduced into evidence the pardon given him on February 5, 1970 by the Honorable John J. McKeithen, Governor of the State of Louisiana. He also introduced a certificate of eligibility signed by the judges of the 21st Judicial District stating that he is and has been an attorney in good standing before the courts of said District since admission and is generally regarded by the judges and the public as an attorney of good repute and standing. Respondent also introduced an amicus curiae brief which was filed by certain attorneys in Tangipahoa and surrounding Parishes which was submitted to this Honorable Court in that matter involving the same parties and numbered 52,373. This brief, among other things, contained a prayer paragraph which stated that the movers were attorneys who have been in the best position to know the respondent and have admired and respected him and his learned and scholarly advocacy and stated that he was an attorney who was a highly respected and capable member of the Bar for many years. This brief was signed by twelve attorneys from the area in which the respondent practices law.

"Evidence was also introduced by means of a stipulation that if the Honorable Grover L. Covington, who presently serves as a Judge on the First Circuit Court of Appeal and formerly served as a judge of the 21st Judicial District Bench were called to testify, that he would testify that in 1960 and

1961 he was practicing law and he was associated with the respondent in a number of cases for which he received an appropriate division of the fee and the total of these fees received by him for these associations for both of these years exceeded the amount which the Government's witnesses credited the respondent. He would have also testified that from time to time the respondent retained investigator services and paid in cash for such services and charged said services to various of the files then being worked on in the office. He would also testify that he was familiar with the system of logging expenses on the files and that he sometimes made entries himself for cash outlays and in other instances reported the same to the respondent or to his secretary, who would make appropriate entries on the files for a cash outlay. He would have also testified that he was familiar with the routine followed in the State and Federal Courts in the area with reference to the reimbursement of witnesses for the lost wages and out of pocket expenses and the payment of expert witnesses for their fees and that the same was often done in cash on the date of trial at the courtroom. In addition, he would have testified as to the reputation of the respondent in the community, both professional and lay community and that his reputation is good. It was also stipulated that if Judge Warren Comish were to appear and testify he would testify as a character witness for the respondent and his testimony would be favorable and that among other things it would

state that the reputation of the respondent in the lay and professional community is good."[3]

Under the former jurisprudence the conviction was strong proof of the misconduct. Thus, the burden to refute this proof was a heavy one. We feel that the prima facie case established by the certificate of conviction has not been rebutted by respondent's evidence. On page 158 of the transcript of the Commissioner's hearing respondent testified that the defense presented to the jury consisted of this evidence that the cash expenditures were not credited by the government. On page 160 respondent admits that the jury just "didn't buy it . . . ." Respondent has not produced sufficient proof to show why the jury's verdict is in error.

Since we find that the record reveals that respondent wilfully made or subscribed an income tax return which he did not believe to be true as to certain material matters, all that remains is to determine whether the crime warrants discipline, and, if so, the extent thereof. To wilfully commit this crime certainly evidences moral turpitude, and, thus, respondent's conduct warrants disciplinary action. The mitigating evidence reveals that respondent has been a member of the bar for many years. It shows that he is well regarded by some

3. Respondent's remaining evidence to the effect that three other attorneys were convicted of the same crime but were not disciplined is not relevant to the issues in this case.

fellow members of the bar and by members of the bench in the area in which he practices law. It further shows that he has a good reputation both among fellow professionals and among members of the lay community.

[16] It is appropriate to note that a disciplinary action is not so much for the punishment of the attorney as it is for the preservation of the integrity of the courts and the salutary effect it has upon other members of the bar. Respondent's conduct reveals a disregard for the law and reflects upon his honesty in dealing with other people. Keeping in mind the respondent's reputation and the fact that tax evasion, 26 U.S.C. § 7201, is a more serious crime than the one for which respondent was convicted, we feel that the harshest penalty is not appropriate in this case.

[17] Accordingly, for the reasons assigned, it is ordered that Leslie B. Ponder, Jr. be suspended from the practice of law for a period of six months, at the cost of respondent.

SUMMERS, J., dissents and adheres to the original opinion.

DENNIS, J., concurs.

SUMMERS, Justice (dissenting).

In further support of the original opinion in this matter and as part of my dissent to the Court's opinion on rehearing, I file herewith a verbatim copy of the letter of the Committee referred to in the original opinion.

COMMITTEE ON
PROFESSIONAL RESPONSIBILITY
LOUISIANA STATE BAR ASSOCIATION
101 SUPREME COURT BUILDING
601 LOYOLA AVENUE
NEW ORLEANS, LA. 70113

THOMAS O. COLLINS, JR., COUNSEL

TELEPHONE (504) 522-6175

March 20, 1973

Respondent #18

Mr. Leslie B. Ponder, Jr.
Mr. J. Lynn Ponder, Counsel
Mr. Jacob L. Karno, Counsel
Mr. Milton P. Masinter, Counsel
Mr. John P. Nelson, Counsel

RE: LOUISIANA STATE BAR ASSOCIATION
VERSUS
LESLIE B. PONDER, JR.
SUPREME COURT 52,373
Our File No. 2408-B

A-52

Gentlemen:

This letter is written to set forth our understanding with reference to our filing with you a joint motion and order to dismiss the above pending disciplinary proceeding.

The Committee will, through its Counsel, join with Leslie B. Ponder, Jr., through his counsel, in filing the attached "Joint Motion and Order to Dismiss Without Prejudice." Thereafter, the Committee shall reconsider the entire matter under ~~Section 12~~, Article XIII of the Articles of Incorporation of the Louisiana State Bar Association which was the controlling procedure prior to the adoption of Article XV of the Articles of Incorporation which became effective September 1, 1971. In addition to the procedures outlined in said ~~Section 12~~, Article XIII, the Committee shall, prior to filing any pleadings with the Supreme Court, afford Leslie B. Ponder, Jr. an informal hearing before the Committee.

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In consideration of the Committee's action outlined above, Leslie B. Ponder, Jr. and all of his undersigned counsel agree to take or forego taking the following actions.

1. Leslie B. Ponder, Jr., through his counsel, will take appropriate action with the Supreme Court of the United States to have his "Petition for Writ of Certiorari" in that matter entitled Louisiana State Bar Association versus Leslie B. Ponder, Jr. dismissed and/or withdrawn.

2. Leslie B. Ponder, Jr. and his counsel will forego the filing and/or pursuit of any action against the Committee, its Counsel, or members in any court, but specifically in the United States District Court for the Eastern District of Louisiana, said action predicated on proceedings filed against Leslie B. Ponder, Jr. in the Supreme Court of Louisiana under Docket Number 52,373.

Yours very truly,

LOUISIANA STATE BAR ASSOCIATION
COMMITTEE ON PROFESSIONAL RESPONSIBILITY

James H. Drury, Chairman
Curtis R. Boisfontaine
Leonard Fuhrer
A. Leon Hebert
Edgar H. Lancaster, Jr.
Henry A. Politz
John F. Pugh
A. Russell Roberts
John B. Scofield
Thomas O. Collins, Jr., Counsel

BY: Thomas O. Collins, Jr.
Thomas O. Collins, Jr., Counsel

AGREED TO AND ACCEPTED

THIS 20th DAY OF MARCH, 1973.

Leslie B. Ponder, Jr.

J. Lynn Ponder, Counsel

Jacob L. Karno, Counsel

Milton P. Masinter, Counsel

John P. Nelson, Counsel

DENNIS, Justice (concurring).

I respectfully disagree with the majority's statement that the evidence offered by respondent in mitigation of his guilt was inadmissible. However, since the evidence was introduced and considered by this Court in determining whether the attorney's crime warranted discipline and the extent thereof, as I believe the Court and the Commissioner are required to do under the Louisiana State Bar Association Articles of Incorporation, as well as the federal and state constitutions, I concur in the majority decision. See, *Louisiana State Bar Association v. Shaheen*, 338 So.2d 1347 (La. 1976) (Dennis, J., dissenting).

APPENDIX D

EXCERPTS FROM PETITION FOR WRIT OF CERTIORARI IN CASE NO. 72-1236

* * * *

The constitutional provisions involved are article 1, Section 10 of U.S. Constitution.

"No State shall -- pass any -- ex post facto law."

B. Amendment IV to U.S. Constitition provides:

"The right of the people to be secure in their persons -- against unreasonable seizures."

C. Amendment V to the U.S. Constitution provides:

"No person shall be held -- nor be deprived of life, liberty or property without due process of law;---."

D. Amendment VI to constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right - to be confronted with the witnesses against him;---"

E. Amendment 14 to U.S. Constitution Section 1 provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

* * * *

APPENDIX E

EXCERPTS FROM JURISDICTIONAL STATEMENT IN RE: HENNINGAN -vs- LOUISIANA STATE BAR ASSOCIATION

* * * *

Section 8. Conviction of a Crime

The following rules shall be application when a respondent has been convicted of a crime, to-wit:

(1) Upon learning that an attorney has been convicted of a crime, whether the conviction results from a plea of guilty or nolo contendere or a verdict after trial, the Committee on Professional Responsibility may secure a certificate of such conviction from the applicable Clerk of Court.

If the conviction is obtained in a Court of another state or a Federal Court, the Committee upon learning of the conviction, shall obtain two (2) copies of a certificate of conviction from the proper Court, and shall retain one (1) copy and may forward the other copy to the Supreme Court.

(2) The Committee shall then make a determination whether or not the crime of which the attorney has been convicted constitutes a serious crime. The term "serious crime" means a felony or any other crime, the necessary element of which as determined by the statute defining such crime, reflects upon the attorney's moral fitness to practice law.

It will be necessary for the Committee in determining

whether or not the crime constitutes a "serious crime," to study the statute defining the crime, particularly if the crime involves the violation of a statute of the Federal Government or another state or jurisdiction.

(3) Upon completing its determination as to whether or not the crime constitutes a "serious crime," the Committee shall file a written report with the Supreme Court, setting forth its findings and conclusions.

(4) If the Supreme Court should concur with the opinion of the Committee that the crime of which the attorney has been convicted constitutes a serious crime, the Supreme Court may suspend the respondent from the practice of law and order the Committee to institute the necessary disciplinary proceedings, provided however, that the disciplinary proceedings so instituted will not, unless requested by the accused, be brought to a hearing until all appeals from the conviction are concluded.

(5) If the Committee in its report to the Supreme Court has concluded that the crime of which the attorney has been convicted is not a serious crime, or if the Supreme Court should determine independently that the crime is not a serious crime, or if the Supreme Court should determine independently that the crime is not a serious crime, the Supreme Court will refer the matter back to the Committee.

(6) An attorney will be reinstated immediately on the reversal of his conviction for a serious crime that has resulted in his suspension, but the reinstatement will not terminate any disciplinary proceedings then pending against the attorney.

(7) After the conviction has become final, that is, all appeals have been concluded or exhausted, the procedure shall be as follows:

(a) The Committee will file a petition in the Supreme Court seeking disbarment or any other remedy that the Committee deems appropriate, and the petition will be served upon the respondent in the same manner as in ordinary proceedings.

(b) When issue is joined by answer by the respondent, a Commissioner will be appointed by the Supreme Court to represent the Court in the same manner as in ordinary proceedings.

(c) At the hearing before the Commissioner, the certificate of the conviction of the respondent shall be conclusive evidence of his guilt of the crime for which he has been convicted.

(d) At the hearing based upon a respondent's conviction of a crime, the sole issue to be determined shall be whether the crime warrants discipline, and if so, the extent thereof. At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime.

(8) Except as provided hereinabove in this Section, the procedure with reference to proceedings based on a conviction of a crime, shall be conducted in the same manner as in ordinary proceedings.

* * * *

APPENDIX F

EXCERPTS FROM JURISDICTIONAL STATEMENT IN RE: HENNINGAN -vs- LOUISIANA STATE BAR ASSOCIATION

* * * *

Former *Article 13, § 12, Articles of Incorporation, Louisiana State Bar Association (March 15, 1941):*

Section 12. Member convicted of felony

Whenever any member of the bar shall be convicted of a felony and such conviction shall be final, the Committee may present to the Supreme Court a certified or exemplified copy of the judgment of such parties shall have twenty days from the time of the filing of the report to file exceptions thereto, and if no exceptions are, within that period, filed by either party, the report shall stand confirmed. If the exceptions are filed, they shall stand for hearing before the court on the summary docket, and on the record prepared by and before the commissioner. For sufficient cause shown, the court may permit evidence taken before the commissioner to be supplemented by hearing in open court.

* * * *

APPENDIX G

PARDON

STATE OF LOUISIANA

EXECUTIVE DEPARTMENT

To WHOM IT MAY CONCERN:

Whereas, At a session of the Honorable the United States District Court, Eastern District of Louisiana, held on the 5th day of February, 1970, L.B. PONDER, JR., was tried and convicted of the crime of filing false income tax returns and for said offense was sentenced by His Honor, the Judge of said court, to pay a fine of $5,000 a for the years 1960 and 1961, with costs; and three years active probation, which was suspended except for a period of thirty days,

And, Whereas, upon the recommendation of the Honorable Board of Pardons, I have thought proper to grant a full pardon with restoration of citizenship to L.B. Ponder, Jr.,

Now, Therefore, I, JOHN J. McKEITHEN, Governor of the State of Louisiana, by virtue of the powers vested in me by the Constitution, do hereby grant a full pardon with restoration of citizenship to L.B. Ponder, Jr., and do hereby direct you to act accordingly, and for so doing this shall be your sifficient warrant and authority.

Given under my signature and the
Great Seal of the State of Louisiana
at the City of Baton Rouge, this 6th

day of March, A.D., 1972

s/ John J. McKeithen
Governor

By The Governor

s/ Wade O. Martin, Jr.
Secretary of State

A TRUE COPY:
WADE O. MARTIN, JR.
Secretary of State

APPENDIX H

EXCEPTIONS OF NO CAUSE OF ACTION, NO RIGHT OF ACTION, PREMATURITY AND VAGUENESS

SUPREME COURT OF LOUISIANA

NO. 54,456

LOUISIANA STATE BAR ASSOCIATION,
Petitioner

VERSUS

LESLIE B. PONDER, JR.
Respondent

FILED: DEPUTY CLERK

EXCEPTIONS OF NO CAUSE OF ACTION, NO RIGHT OF ACTION, PREMATURITY AND VAGUENESS

Now into Court, comes Respondent, LESLIE B. PONDER, JR., through his undersigned counsel, and excepts to the petition of the Louisiana State Bar Association for disciplinary action against Respondent on the following grounds:

1.

That the said petition discloses no cause of action in that the Louisiana State Bar Association's proceeding under Section 8, Article XV, Articles of Incorporation of the Louisiana State Bar Association, which became effective September 1,

1971, is subject to the inhibition in the Federal and State Constitutions against the passage of bills of attainder and ex post facto laws for an alleged crime committed prior to the adoption and effective date of said rules. *Article I, Section 10 of the United States Constitution and Article IV, Section 15, Louisiana Constitution (1921), as amended.* Article XV of the Articles of Incorporation of the Louisiana State Bar Association enlarges the penalty provisions for disbarment to a mandatory minimum of five years. This increased penalty for a prior offense is unconstitutional under the Federal and State Constitutions as being ex post facto and petitioner has no cause of action to proceed against Respondent.

2.

That the said petition discloses no right and no cause of action in that its allegations fail to show that Respondent had due process of law. Pursuant to Article XV, Articles of Incorporation of the Louisiana State Bar Association, "Discipline and Disbarment of Members", effective September 1, 1971, as stated in Section 8, Sections 1-5, Petitioner did not afford Respondent due process of law as provided by the rules therein and the constitutional guarantee of due process of law under the Federal and State Constitutions. Pursuant to the rules of Article XV, Section 8, Petitioner, through its Committee on Professional Responsibility, upon competing its determination *shall* file a written report with this Honorable Court and the Committee *shall* "set forth its findings and conclusions". If this Honorable Court concurs with the Committee's opinion, then this Honorable Court may *order* the Committee to file disciplinary proceedings. The filing of this disbarment suit by Petitioner is without due process procedure as guaranteed by the rules under Article XV,

Section 8, and the Federal and State Constitution. Until Petitioner complies with this due process procedure, Petitioner has no right and no cause of action to proceed with its petition.

3.

That the said petition filed by Petitioner is premature in that Article XV, Articles of Incorporation of the Louisiana State Bar Association, Section 8, sub-paragraph 3, provides that "upon completing its (committee) determination as to whether or not the crime constitutes a 'serious crime', the committee *shall file a written report* with the Supreme Court, setting forth its findings and conclusions", and pursuant to Article XV, Section 8, sub-paragraph 4, this Honorable Court "*order* the Committee to institute the necessary proceedings."

4.

That the said petition is premature in that Respondent should be afforded a formal investigatory hearing before the Committee in accordance with this Honorable Court's decision in *Louisiana State Bar Association v. Ehmig*, 277 So. 2d, 137 (1973). A denial of a formal investigatory hearing is a denial of Respondent's rights to due process as guaranteed by the State and Federal Constitutions and renders those provisions of Article XV, Articles of Incorporation of Louisiana State Bar Association unconstitutional which conflict with it.

5.

That the petition discloses no cause of action since the

Committee on Professional Responsibility has made no determination in accordance with Article XV, Articles of Incorporation of the Louisiana State Bar Association, whether or not the crime constitutes a "serious crime", reflecting upon Respondent's moral fitness to practice law and until this determination is made by the Committee, filed with this Honorable Court and reviewed by this Honorable Court, this Court should not proceed against Respondent since this would be a denial of his due process as guaranteed to him by the State and Federal Constitutions and by Article XV of the Articles of Incorporation of the Louisiana State Bar Association.

6.

That Respondent cannot safely plead to Petitioner's petition because said petition is too vague, general and indefinite as to the Committee's determination that Respondent has committed a serious crime reflecting upon Respondent's moral fitness to practice law.

7.

That the petition for disbarment filed herein by the Louisiana State Bar Association through its Committee on Professional Responsibility is res judicata.

8.

That the Louisiana State Bar Association through its Committee on Professional Responsibility should be judicially estopped from asserting any disbarment proceedings against Respondent because the alleged misconduct occurred more than thirteen years prior to the filing of the petition;

that Petitioner judicially acknowledged in the suit entitled, *Louisiana State Bar Association v. Robert Douglas Edwards*, No. 51,861 on the docket of this Court, which makes reference to Respondent's previous disbarment proceeding, that the Committee felt that it had serious doubts as to the new procedures under Section 8, Article XV since "it feels it would be improper for it to pursue this matter under the questioned and questionable procedures".

9.

Respondent avers that the proceedings instituted by the Louisisiana State Bar Association, through its Committee, is a quasi criminal proceeding and should be barred by the prescriptive period provided in Louisiana Code of Criminal Procedure Article 578(2) and 578(3), and in the alternative, by the ten year prescriptive period for personal actions provided in Article 3544 of the Louisiana Civil Code, for alleged misconduct occurring more than thirteen years prior to the filing of this petition.

10.

In the alternative: Respondent excepts to the petition of the Louisiana State Bar Association in that the petition is res judicata and/or discloses no cause and no right of action because petitioner should proceed under Article XIII of the Articles of Incorporation which article controlled the procedure to be followed prior to September 1, 1971, the date on which Article XV of the Articles of Incorporation was adopted. In support of these exceptions, Respondent incorporates by reference the proceedings entitled, *Louisiana State Bar Association v. Leslie B. Ponder, Jr.*, docket # 52,373 on file in this Honorable Court, the *Joint Motion and Order to*

Dismiss Without Prejudice filed March 20, 1973, the *Petition for Writ of Certiorari* and *Motion to Withdraw Petition for Writ of Certiorari Without Prejudice* in suit filed in the United States Supreme Court entitled, *Louisiana State Bar Association v. Leslie B. Ponder, Jr.*, docket number 72-1236, and letter of petitioner dated March 20, 1973 and accepted by Respondent and his counsel of record. By reason of these pleadings, documents, and actions of petitioner, Louisiana State Bar Association, and of Respondent, Leslie B. Ponder, Jr., petitioner has no cause and no right of action to proceed, that its action is res judicata, and that this matter is now moot. Petitioner's proceeding is unconstitutional under the Federal and State constitutions and a deprivation of Respondent's rights to due process of law.

11.

Further, in the alternative, Respondent excepts to the petition of Louisiana State Bar Association in that the petition discloses no cause and no right of action against Respondent under Article XIII of the Articles of Incorporation because Respondent has been granted a Pardon by the Governor for the State of Louisiana, that the crime for which Respondent has been convicted is not a crime under the laws of the State of Louisiana and/or a crime involving misconduct affecting moral turpitude and/or a crime for professional misconduct against a client of Respondent; that the Pardon by the Governor has restored the full rights of Respondent under the laws of the State of Louisiana, and petitioner should be estopped from proceeding with this petition for disbarment for its failure to disclose a right and cause of action against Respondent.

WHEREFORE, Exceptor prays that the foregoing exceptions be maintained and that said petition of the Louisiana State Bar Association be dismissed as against Respondent, LESLIE B. PONDER, JR.

Respectfully submitted,

Jacob L. Karno
1100 N. Causeway Blvd.
Metairie, La. 70004

Milton P. Masinter
550 S. Broad Avenue
New Orleans, La. 70119

CERTIFICATE

I hereby certify that a copy of the above and foregoing Exception has been hand delivered to Mr. Thomas O. Collins, Jr., Louisiana State Bar Association, 101 Supreme Court Building, 301 Loyola Avenue, New Orleans, Louisiana, 70112, this 19th day of March, 1974.

Jacob L. Karno